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9 IN RE CIM-SQ TRANSFER CASES

Case No. 5:20-cv-06326-EJD

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11 This Document Relates To:**ORDER OF SERVICE**12
13 25-cv-07879-EJD; *Vines v. Broomfield et al.***INTRODUCTION**14
15 Plaintiff, a California prisoner, filed a *pro se* civil rights action. Plaintiff alleged that
16 defendants violated his constitutional rights by transferring over 100 prisoners, some of whom
17 were infected with COVID-19, from the California Institution for Men (CIM) to San Quentin State
18 Prison (SQSP)¹ in 2020. The case is now before the Court for screening pursuant to 28 U.S.C. §
19 1915A(a), and service of the complaint on defendants is ordered. Plaintiff will be granted leave to
20 proceed *in forma pauperis* by separate order.21
22 This case has been consolidated with cases in this district related to the 2020 prisoner
23 transfer and related to the first case filed, No. 5:20-cv-06326-EJD, which now has the caption “In
24 Re CIM-SQ Transfer Cases.” *Pro se* prisoner cases that are part of the consolidated matter are
25 stayed except for the purposes of service. Service shall therefore proceed in plaintiff’s case as
26 ordered below, but the case will remain stayed for all other purposes. The docket for Case No. 25-
27 cv-07879-EJD and all other individual dockets have been closed. If plaintiff wishes to file any28
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¹ SQSP is now called the San Quentin Rehabilitation Center. The former name is used in this Order for clarity.

1 motions, he must file them in Case No. 5:20-cv-06326-EJD and include his original case number,
2 No. 25-cv-07879-EJD, on the left side of the heading.

3 STANDARD OF REVIEW

4 Federal courts must engage in a preliminary screening of cases in which prisoners seek
5 redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. §
6 1915A(a). The Court must identify cognizable claims or dismiss the complaint, or any portion of
7 the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief
8 may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” *Id.*
9 § 1915A(b). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901
10 F.2d 696, 699 (9th Cir. 1990).

11 Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the
12 claim showing that the pleader is entitled to relief.” “Specific facts are not necessary; the
13 statement need only give the defendant fair notice of what the . . . claim is and the grounds upon
14 which it rests.” *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted). Although to
15 state a claim a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to
16 provide the grounds of his entitle[ment] to relief requires more than labels and conclusions, and a
17 formulaic recitation of the elements of a cause of action will not do Factual allegations must
18 be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*,
19 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer “enough facts to
20 state a claim for relief that is plausible on its face.” *Id.* at 1974.

21 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a
22 right secured by the Constitution or laws of the United States was violated, and (2) that the alleged
23 violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S.
24 42, 48 (1988).

25 If a court dismisses a complaint for failure to state a claim, it should “freely give
26 leave” to amend “when justice so requires.” Fed. R. Civ. P. 15(a)(2). A court has discretion to
27 deny leave to amend due to “undue delay, bad faith or dilatory motive on the part of the movant,
28 repeated failure to cure deficiencies by amendment previously allowed, undue prejudice to the

1 opposing party by virtue of allowance of the amendment, [and] futility of amendment.”
2 *Leadsinger, Inc. v. BMG Music Pub.*, 512 F.3d 522, 532 (9th Cir. 2008).

3 **LEGAL CLAIMS**

4 Plaintiff names as defendants the State of California, the California Department of
5 Corrections and Rehabilitation (CDCR), SQSP, Estate of Robert S. Tharratt, Ronald Davis,
6 Ronald Broomfield, Clarence Cryer, Alison Pachynski, Shannon Garrigan, Louie Escobell,
7 Muhammad Farooq, Kirk Torres, Katherine Allison, and Ralph Diaz.

8 He alleges defendants violated his constitutional rights by transferring 122 inmates from
9 CIM to SQSP, causing him to contract COVID-19. He also alleges violation of the Rehabilitation
10 Act because he is high-risk medical and has asthma, blood clots, and DVT, and defendants'
11 conduct put him at greater risk of contracting COVID-19 than nondisabled inmates. He also
12 alleges violation of California's Bane Act and negligent infliction of emotional distress. He seeks
13 damages.

14 **A. Eighth Amendment Claim**

15 The allegations regarding the May 2020 transfer of CIM inmates into SQSP state
16 cognizable Eighth Amendment claims against all defendants except the State of California, the
17 California Department of Corrections and Rehabilitation (CDCR), and SQSP. *Farmer v. Brennan*,
18 511 U.S. 825, 837 (1994) (prison official is deliberately indifferent if he or she knows that
19 prisoner faces substantial risk of serious harm and disregards that risk by failing to take reasonable
20 steps to abate it).

21 **B. Bane Act**

22 California Civil Code section 52.1, the Bane Act, “protects individuals from conduct aimed
23 at interfering with rights that are secured by federal or state law, where the interference is carried
24 out ‘by threats, intimidation or coercion.’” *Reese v. Cnty. of Sacramento*, 888 F.3d 1030, 1040
25 (9th Cir. 2018) (quoting *Venegas v. County of Los Angeles*, 153 Cal.App.4th 1230, 1239 (2007)).
26 A defendant must have “specific intent” to violate the plaintiff’s rights. “But it is not necessary
27 for the defendants to have been ‘thinking in constitutional or legal terms at the time of the
28 incidents, because a reckless disregard for a person’s constitutional rights is evidence of a specific

1 intent to deprive that person of those rights'." *Id.* at 1035, 1045 (quoting *United States v. Reese*, 2
2 F.3d 870, 885 (9th Cir. 1993)) (triable issue as to specific intent where the defendant deputy
3 sheriffs, responding to a 911 call about a gunshot and a man with a knife, fired at the plaintiff as
4 he answered the door with a knife). Here, liberally construed, plaintiff has stated a cognizable
5 claim that defendants acted with reckless disregard for his constitutional rights, meeting the
6 elements of the Bane Act.

7 **C. Rehabilitation Act**

8 The elements of a § 504 Rehabilitation Act claim are that: (1) the plaintiff is a handicapped
9 person under the Act; (2) he is otherwise qualified; (3) the relevant program receives federal
10 financial assistance; and (4) the defendants impermissibly discriminated against him on the basis
11 of the handicap. *Bonner v. Lewis*, 857 F.2d 559, 562-63 (9th Cir. 1988). The Act applies to state
12 prisons receiving federal financial assistance. *Armstrong v. Wilson*, 124 F.3d 1019, 1022-23 (9th
13 Cir. 1997), and a state's acceptance of federal funds may waive sovereign immunity. *See Pugliese*
14 *v. Dillenberg*, 346 F.3d 937, 937-38 (9th Cir. 2003) (per curiam).

15 Liberally construed, plaintiff has stated a cognizable Rehabilitation Act claim against
16 defendants the State of California, CDCR, and SQSP.

17 **D. Negligent Infliction of Emotional Distress**

18 Plaintiff has also stated a cognizable state-law claim for negligent infliction of emotional
19 distress. Under California law, "there is no independent tort of negligent infliction of emotional
20 distress." *Potter v. Firestone Tire & Rubber Co.*, 6 Cal. 4th 965, 984 (1993). A negligent
21 infliction of emotional distress claim is only available where the "defendant has assumed a duty to
22 plaintiff in which the emotional condition of the plaintiff is an object," and "recovery is available
23 only if the emotional distress arises the defendant's breach of some other legal duty and the
24 emotional distress is proximately caused by that breach of duty." *Id.* at 985. Here, defendants
25 have a duty to plaintiff as a prisoner under state tort law. California "[c]ase law holds that 'there is
26 a special relationship between jailer and prisoner, imposing on the former a duty of care to the
27 latter'." *Lawson v. Superior Ct.*, 180 Cal. App. 4th 1372, 1389-90 (2010) (quoting *Giraldo v.*
28 *Department of Corrections & Rehabilitation*, 168 Cal. App. 4th 231, 250 (2008)). Plaintiff alleges

1 that the emotional distress arose out of defendants' breach of their duty to him by exposing him to
2 COVID-19.

3 **CONCLUSION**

4 1. Plaintiff has stated the following cognizable claims against defendants Estate of
5 Robert S. Tharratt, Ronald Davis, Ronald Broomfield, Clarence Cryer, Alison Pachynski, Shannon
6 Garrigan, Louie Escobell, Muhammad Farooq, Kirk Torres, Katherine Allison, and Ralph Diaz;
7 violation of the Eighth Amendment by deliberate indifference to his health and safety needs;
8 California Civil Code section 52.1; and negligent infliction of emotional distress.

9 2. Plaintiff has stated the following cognizable claims against defendants the State of
10 California, CDCR, and SQSP: violation of the Rehabilitation Act.

11 3. The Court ORDERS that service shall proceed by the United States Marshal
12 Service ("USMS") on the State of California through the Office of the Attorney General.

13 4. The Court orders that service on the following defendants shall proceed under the
14 California Department of Corrections and Rehabilitation's ("CDCR") e-service program for civil
15 rights cases from prisoners in the CDCR's custody:

- 16 a. CDCR
- 17 b. SQSP
- 18 c. Estate of Robert S. Tharratt
- 19 d. Ronald Davis
- 20 e. Ronald Broomfield
- 21 f. Clarence Cryer
- 22 g. Alison Pachynski
- 23 h. Shannon Garrigan
- 24 i. Louie Escobell
- 25 j. Muhammad Farooq
- 26 k. Kirk Torres
- 27 l. Katherine Allison
- 28 m. Ralph Diaz

1 In accordance with the program, the clerk is directed to serve on the CDCR via email the
2 following documents: the operative complaint (Dkt. No. 5 in 25-cv-07879), this Order of Service,
3 a CDCR Report of E-Service Waiver form, and a summons. The clerk also shall serve a copy of
4 this order on the plaintiff.

5 No later than 40 days after service of this order via email on the CDCR, the CDCR shall
6 provide the court a completed CDCR Report of E-Service Waiver advising the court which
7 defendant(s) listed in this order will be waiving service of process without the need for service by
8 the USMS and which defendant(s) decline to waive service or could not be reached. The CDCR
9 also shall provide a copy of the CDCR Report of E-Service Waiver to the California Attorney
10 General's Office which, within 21 days, shall file with the Court a waiver of service of process for
11 the defendant(s) who are waiving service.

12 Upon receipt of the CDCR Report of E-Service Waiver, the clerk shall prepare for each
13 defendant who has not waived service according to the CDCR Report of E-Service Waiver a
14 USM-285 Form. The clerk shall provide to the USMS the completed USM-285 forms and copies
15 of this order, the summons and the operative complaint for service upon each defendant who has
16 not waived service. The clerk also shall provide to the USMS a copy of the CDCR Report of E-
17 Service Waiver.

18 5. All defendants are cautioned that Rule 4 of the Federal Rules of Civil Procedure
19 requires them to cooperate in saving unnecessary costs of service of the summons and complaint.
20 Pursuant to Rule 4, if defendants, after being notified of this action and asked by the Court, on
21 behalf of plaintiff, to waive service of the summons, fail to do so, they will be required to bear the
22 cost of such service unless good cause can be shown for their failure to sign and return the waiver
23 form.

24 6. All communications by plaintiff with the Court must be served on defendants'
25 counsel by mailing a true copy of the document to defendants' counsel. The Court may disregard
26 any document which a party files but fails to send a copy of to his opponent. Until defendants'
27 counsel has been designated, plaintiff may mail a true copy of the document directly to
28 defendants, but once defendants are represented by counsel, all documents must be mailed to

1 counsel rather than directly to defendants.

2 7. Plaintiff is responsible for prosecuting this case. Plaintiff must promptly keep the
3 Court informed of any change of address and must comply with the Court's orders in a timely
4 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
5 to Federal Rule of Civil Procedure 41(b). Plaintiff must file a notice of change of address in every
6 pending case every time he is moved to a new facility.

7 8. Any motion for an extension of time must be filed no later than the deadline sought
8 to be extended and must be accompanied by a showing of good cause. Plaintiff is cautioned that
9 he must include the case name and case number for this case on any document he submits to the
10 Court for consideration in this case.

11 9. The case will remain stayed for all purposes other than service of the complaint on
12 defendants.

13 **IT IS SO ORDERED.**

14 Dated: December 22, 2025

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EDWARD J. DAVILA
United States District Judge